))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 2371 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MULJIBHAI BHURABHAI
Versus
UPENDRA VYAS - MANAGER

Appearance:
Mr.Mukul Sinha withMr. Subramaniam Iyer for Petitioner
Mr.V.B.Patel withMr.Deepak V Patel for Respdt.No. 1
Mr.K.K.Shah, Mr.N.R.Shahani, Mr.P.H.Pathak, Mr. P.C.Master, Mr.D.S.Vasavda and Mrs.S.N. Pahva, as Interveners.

CORAM : MR.JUSTICE K.R.VYAS
and

MR.JUSTICE C.K.BUCH

Date of decision:10/8/2000

CAV JUDGEMENT (Per: K.R.Vyas,J.)

1. The applicant- workman has made a grievance in this application that even though the Industrial Court has passed an award dated 13th September 1999 in Appeal (IC) No. 43 of 1995, in his favour, he is neither reinstated nor paid back wages and, therefore, the respondents be held guilty of having committed wilful contempt of the Court and to punish the respondents as per the provisions of Contempt of Courts Act.

2. This is one of many such matters whereby the concerned workman, instead of executing the award under section 33(C) of the Industrial Disputes Act, has filed application under section 10 of the Contempt of Courts Act, 1971. This Court entertains such applications in view of different set of decisions in the matter. The questions involved in these applications are :

(i) Whether the Labour Court is a Court within the meaning of Contempt of Courts Act ?

(ii) Whether the contempt proceedings are maintainable when adequate remedy under section 33-C of the Industrial Disputes Act is available ?

With a view to decide these questions finally, we sought assistance of all advocates by issuing a notice. In response to the same, the learned advocates appeared as interveners and submitted their view points by inviting our attention to relevant case laws on both the questions.

3. Mr.V.B.Patel, learned Counsel, after having invited our attention to the provisions of constitution as well as Industrial Disputes Act, submitted that even though the Labour Court/ Industrial Tribunal exercises powers to adjudicate rights of the parties, they are not "Courts". In other words, Mr. Patel submitted that the labour courts/industrial tribunals are not 'courts' even though they have trappings of the courts. In the submission of Mr. Patel, they are exercising purely quasi judicial powers under the supervision of the High Court and,therefore,mere supervision by the High Court under Article 227 of the Constitution is not a real test so as to make them "Courts" within the meaning of section 10 of the Contempt of Courts Act. Mr. Patel finally submitted that in view of the decision of the Supreme

Court in the case of (The) Alahar Cooperative Credit Service Society Vs. Shamlal, 1995(2) GLH 550 wherein the Supreme Court, in no uncertain terms, has held that the Labour Court constituted under section 7 of the Industrial Disputes Act is not 'a court subordinate to High Court' under section 10 of the Contempt of Courts Act and, therefore, the contempt proceedings for non compliance of the order or award are not maintainable, the point is concluded and, therefore, the present application is required to be rejected.

4. Mr.K.K.Shah, learned Counsel, as one of the interveners, submitted that the phrase 'subordinate to it' as appearing in section 10 of the Contempt of Courts Act is wide enough to include all courts which are judicially subordinate to High Court even though administrative control over them under Article 235 of the Constitution does not vests in the High Court and under Article 227 of the Constitution, High Court has the power of superintendence over all courts and tribunals through out the territories in relation to which it exercises jurisdiction. Mr. Shah, by inviting our attention to the decision of the Supreme Court in the case of State of Maharashtra Vs. Labour Laws Practitioners Association, AIR 1998 SC 1233, submitted that since the Labour Court judges and the judges of the Industrial Tribunal belong to judicial service, the hierarchy contemplated in the case of labour court judges is the hierarchy of labour court judges and industrial tribunal judges with the industrial tribunal judges holding superior position of district judges, the labour court is held subject to High Court's power of superintendence under Article 227 of the Constitution, it is not correct to contend that the labour court is not a 'court'.

5. Mr.Sinha,learned Counsel for the applicant-workman contended that in view of section 119 B of the Bombay Industrial Relations Act, whereby the labour court/ industrial court can make a reference regarding their contempt to the High Court,they are necessarily 'courts' and, therefore, no other view except to hold the labour court/ industrial court as 'courts' is possible.

6. The Full Bench of this Court in the case Shaikh Mohammedbhikhan Hussain Vs. Manager, Chandrabhanu Cinema, 27 (1) GLR 1, has held that the industrial tribunal under the Industrial Disputes Act is a 'court' within the meaning of section 2 read with section 10 of the Contempt of Courts Act. The Supreme Court in Alahar's case (supra) has held that the labour court is not a 'court subordinate to High Court'within the meaning

of section 2 read with section 10 of the Contempt of Courts Act. In view of this, the Division Bench of this Court,in the case of Girishchandra R.Bhatt Vs. Dineshbhai N.Sanghvi, 1996(1)GLH 523, ruled that in view of the judgment of the Supreme Court in Alahar's case (supra), the judgment of the Full Bench of this Court in Mommadbhikan's case (supra) has not remained a good law in view of Article 141 of the Constitution.

7. Section 10 of the Contempt of Courts Act deals with the powers of the High Court to punish for the contempt of subordinate courts. Therefore, the question arises as to whether the labour court is a 'court' and then whether it is a 'subordinate court'. The Supreme Court, in the case of Brajnandan Sinha Vs. Jyoti Narain, AIR 1956 SC 66 has held that the word 'court' is not defined in the Contempt of Courts Act and the expression 'Courts subordinate to the High Courts' in section 3(1) would prima facie mean the Courts of law subordinate to the High Courts in hierarchy of Courts established for the purpose of administration of justice throughout the Union. The definition of 'Court' in section 3 of the Evidence Act is not exhaustive but framed only for the purpose of that Act and is not to be extended where such an extension is not warranted.

It was further observed that the definitions of the words 'Judge' and 'Court of Justice' in Ss.19 and 20 of the Penal Code indicate that the pronouncement of a definitive judgment is considered the essential 'sine qua non' of a Court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons, it cannot be predicated that he or they constitute a Court.

Supreme Court, after considering the judgment rendered in the case of Bharat Bank Ltd. Vs. Employees of Bharat Bank Ltd., AIR 1950 SC 188, Muqboolhussein Vs. State of Maharashtra, AIR 1953 SC 325 and Cooper Vs. Wilson, AIR 1937-2 KB 309, held that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

In the case of Thakur Jugal Kishore Sinha Vs. The Sitamarhi Central Cooperative Bank Ltd., AIR 1967 SC 1494, a question arose before the Supreme Court as to whether the Assistant Registrar discharging the functions

of a Registrar under section 48 read with section 6(2) of Bihar and Orissa Cooperative Societies Act, is a 'Court'. Supreme Court, after comparing the powers given to the Registrar under the Act with the Code of Civil Procedure, found that the Registrar is given the same powers as are given to ordinary Civil Courts by the Code of Civil Procedure including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in S.151 of the Code of Civil Procedure. Supreme Court observed that " in adjudicating upon a dispute referred under S. 48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do. Therefore, an Assistant Registrar discharging the function of Registrar under S.48 read with S. 6(2) of Bihar and Orissa Cooperative Societies Act, is a Court".

Supreme Court further observed that :

"Article 228 does not indicate that unless a High Court can withdraw a case to itself from another Court for disposing of a substantial question of law as to the interpretation of the Constitution, the latter Court is not subordinate to the High Court. This Article is only intended to confer jurisdiction and power on the High Court to withdraw a case for the purpose mentioned above from the ordinary Courts of law whose decision may, in the normal course of things, be taken up to the High Court by way of an appeal. Article 227 is of wider ambit; it does not limit the jurisdiction of the High Court to the hierarchy of Courts functioning directly under it under the Civil Procedure Code and Criminal Procedure Code but it gives the High Court power to correct errors of various kinds of all Courts and tribunals in appropriate cases. Needless to add that errors as to the interpretation of the Constitution is not out of the purview of Art. 227 although the High Court could not, under the powers conferred by this Article, withdraw a case to itself from a tribunal and dispose of the same, or determine merely the question of law as to the interpretation of the Constitution arising before the tribunal. The subordination for the purpose of S. 3 of the Contempt of Courts Act means judicial subordination and not subordination under the hierarchy of Courts under

the Civil Procedure Code or the Criminal Procedure Code."

In the case of Board of Revenue, UP Vs. Vinay Chandra Misra, AIR 1981 SC 723, the Apex Court held that the "phrase 'courts subordinate to it' as used in S. 10 is wide enough to include all courts which are judicially subordinate to the High Court, even though administrative control over them under Art.235 of the Constitution does not vest in the High Court. Under Art. 227 of the Constitution, the High Court has the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The Court of Revenue Board,therefore, is a court 'subordinate to the High Court' within the contemplation of S. 10 of the Act."

In the aforesaid case, the Supreme Court was required to decide the question,namely whether the High Court can take suo motu cognizance of contempt of its subordinate courts/ inferior courts when it is not moved in either of the two modes mentioned in section 15(2) of the Act. The Supreme Court was of the view that the High Court, under Article 227 of the Constitution has the power of superintendence over all the courts/ tribunals throughout the territories in relation to which it exercises jurisdiction and, therefore, the Board of Revenue is a 'court subordinate to the High Court'. Since the Supreme Court in the case of Brajnandan (supra) and Jugal Kishore (supra) has laid down the test to constitute a court, in light of the observations made therein and no reference is made to those tests in Vinaychandra's case (supra), we have to consider whether the labour court/industrial tribunal is a 'Court'in light of the tests laid down by Supreme Court in above referred cases.

8. Section 7 of the Industrial Disputes Act authorises the appropriate Government by notification in the Official Gazette,to constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the Act. Similar power is given to appropriate Government under section 7-A to constitute Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under the Act. Likewise, under section 7-B, the Central Government may constitute National Industrial Tribunals. Under

section 10,it is an obligation on the part of the appropriate Government to make a reference if in its opinion any industrial dispute exists or is apprehended. Section 11 mainly deals with the procedure and powers of the conciliation officers, Boards, Courts and Tribunals. Subsection (3) of section 11 provides that every Board, Court, (Labour Court, Tribunal and National Tribunal) shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit, in respect of the following matters, namely--

(a) enforcing the attendance of any person and examining him on oath;
(b) compelling the production of documents and material objects;
(c) issuing commissions for the examination of witnesses;
(d) in respect of such other matters as may be prescribed;

and every inquiry or investigation by a Board, Court (Labour Court, Tribunal or National Tribunal), shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).

Subsection (4) of section 11 provides that a conciliation officer (may enforce the attendance of any person for the purpose of examination of such person or call for) and inspect any document which he has ground for considering to be relevant to the industrial dispute (or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) (in respect of enforcing the attendance of any person and examining him or of compelling the production of documents).

Subsection (5) of section 11 provides that a Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

Subsection (6) of section 11 provides that all conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or

National Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

Subsection (7) of section 11 prescribes powers of Labour Court, Tribunal or National Tribunal as the case may be, to determine the amount of costs and to give necessary directions accordingly to be recovered as arrears of land revenue and finally, the subsection (8) of section 11 provides that every (Labour Court, Tribunal or National Tribunal) shall be deemed to be Civil Court for the purposes of [Sections 345, 346 and 348 of the Code of Criminal Procedure.

Reading the aforesaid provisions, it is clear that the Labour Court or Tribunal, though having trappings of Civil Court, are not exercising all the powers which are vested in the Civil Court under the Code of Civil Procedure Code. On the contrary, under subsection (3) of section 11, powers are restricted in the sense that it will have same powers like Civil Court in respect of enforcing the attendance of any person and examining him on oath, compelling production of documents and material objects, issuing commission for examination of witnesses and in respect of such other matters as may be prescribed. Since the Labour Court/ Tribunal is exercising the aforesaid limited powers and in view of the provisions that while exercising the same power in an inquiry or investigation, it is the judicial proceeding within the meaning of sections 193 and 228 of the IPC, we are of the opinion that exercise of powers by Labour Court/ Tribunal will not cover the test laid down by the Apex Court in the case of Thakore Jugal Kishore (supra). In the said case, the Registrar was enjoying the same powers as are given to ordinary civil boards by the Code of Civil Procedure including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in S. 151 of the Code of Civil Procedure. In adjudication upon a dispute referred under S. 48 of Bihar and Orissa Cooperative Societies Act, the Registrar was discharging the same functions and duties in the same manner as a Court of law is expected to do. Since the Registrar under the said judgment was exercising same powers as are given to ordinary civil courts by the Code of Civil Procedure, the Apex Court was required to hold that the Assistant Registrar discharging the functions of Registrar under section 48 read with 2 of the Bihar and Orissa Cooperative Societies Act is a 'Court'. As observed

earlier, the Labour Court/Tribunal exercising very limited powers stated above cannot and will not come within the purview of the test laid down by the Apex Court.

9 The Supreme Court, in the case of Bharat Bank Ltd. (supra), has held that the Industrial Tribunal, though discharges judicial functions, is not a "Court". It was observed therein that the Industrial Tribunal set up under section 7 of the Industrial Disputes Act, 1947 has all the necessary attributes of a Court of Justice. The fact that the Government has to make a declaration under section 15(2) of the Act after the final decision of the Tribunal is not in any way inconsistent with the view that the Tribunal acts judicially. The functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions although it is not a "Court" in the technical sense of the word.

Reading the said observations of the Supreme Court,it is clear that one cannot go by mere nomenclature. One has to examine the functions of the Tribunal and how it proceeds to discharge its functions. In substance, the Labour Court/ Tribunal having all trappings of the Court and performing functions which cannot but be regarded as judicial. Apart from having some of the trappings of a Civil Court, it is also required to be considered as to whether it has power to give a decision or a definitive judgment which has finality or authoritativeness which are also the essential tests of a judicial pronouncement.

10. Section 17(1) of the Industrial Disputes Act provides for publication of every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal, within a period of thirty days from the date of its receipt by the appropriate Government, in such manner as the appropriate Government thinks fit. Subsection (2) of section 17 provides that the award published under subsection (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

The Division Bench of this Court in the case of Girishchandra R.Bhatt(supra), after considering section 17 and 17-A of the Industrial Disputes Act,held that the pronouncement of Labour Court/ Tribunal or National Tribunal under the Industrial Disputes Act has neither finality nor authoritativeness though they fall within the trappings of the Court inasmuch as they are subject

to publication by the appropriate Government. The Division Bench in the said judgment has observed that:

> "From the provisions of Section 17-A, it is clear that despite the judicial pronouncement by the Labour Court, Tribunal or National Tribunal, power lies with the appropriate Government to reject or modify the same. When the power is lying with the Government to reject or modify the award given by Labour Court, Tribunal or National Tribunal,it cannot be said that the award has a finality or authoritativeness. Finality and authoritativeness are the essential tests of a judicial pronouncement. "

Thus, considering the aforesaid provisions of the Industrial Disputes Act, it is clear that the Labour Court / Industrial Tribunal created by the Government to decide industrial and labour disputes under Article 323-B of the Constitution of India read with section 7 of the Industrial Disputes Act are not "Courts" unless constituted as such by the Act creating them. They have wide powers which are out of the way from the ordinary law administered by Courts of law and they are not bound by ordinary procedural laws. They act on the principles of equity and justice and good conscience. The ordinary course of law has no power to grant reinstatement with or without back wages; that power is special and peculiar to the Labour Court. It does not exercise powers of Civil Court. Even though it has trappings and attributes of a "Court", it is not a "Court". Even although it must discharge its duties in a "judicial" manner, it does not for that reason have the status of a "Court". It is a quasi judicial body and has features in common with the Court. In our opinion, a distinction is required to be drawn between the "Courts" and the Tribunals which are not "Courts". Just because a Tribunal shares resemblance of a Court cannot be held to be a "Court. They have to act judicially, but that itself does not make them a Court of Law. (See Attorney General Vs. British Broadcasting Corporation, 1980(3) All England Law Reports 161).

11. As observed earlier,in view of subsection (1)of section 11 of the Industrial Disputes Act, which confers same power as vested in the Civil Court in respect of certain matters only, the proceedings before them are deemed to be judicial proceedings within the meaning of sections 193 and 228 of the IPC. Under subsection (6) of section 11, the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be

public servants within the meaning of S.21 of the IPC. They are deemed to be Civil Court for the purpose of sections 345, 346 and 348 of the Code of Criminal Procedure only. The proceedings before such forums are judicial proceedings in view of the powers conferred on them by section 11(3) of the Industrial Disputes Act.They have all the trappings of the Judicial Tribunal. If they were Courts, such provisions were not necessary. Merely because they are subjected to under Articles 226 and 227 of the Constitution and they are amenable to writ jurisdiction, they are not "Courts" as contemplated by the Contempt of Courts Act. In view of this, the phrase used "Court subordinate to High Court" under section 10 of the Contempt of Courts Act is for the purpose of judicial supervision. Even while exercising wide powers under Article 227 of the Constitution, High Court cannot withdraw a case to itself from a labour court or tribunal and dispose of the same, or determine merely the question of law as to the interpretation of the Constitution arising before the labour court or tribunal. Article 228 intends to confer jurisdiction and power on High Court to withdraw a case for the purpose mentioned above from the ordinary courts of law whose decision may, in the normal course of things, be taken up to High Court by way of an appeal. In any case, once the Apex Court, in the case of Alahar Cooperative Service Society Vs. Shamlal, 1995(2)GLH 550 has held that the Labour Courts/ Tribunals are not "Courts" subordinate to High Court under section 10 of the Contempt of Courts Act, in our opinion, there is no reason for this High Court to take a different view against the decision of the Apex Court. Merely because the Apex Court did not give reasons for reaching to the said conclusion in Alhar's case (supra), it would be too much for us to overlook the said judgment. Likewise, merely because the Apex Court did not refer the earlier judgments on the point, one may not draw a conclusion that earlier judgments were not in the mind of Their Lordships at the time of deciding Alhar's case (supra).

12. The decision rendered by the Apex Court in the case of State of Maharashtra Vs. Labour Laws Practitioners Association, AIR 1998 SC 1233 followed by the Division Bench of this Court in the case of Prantiya Kamdar Sena Vs. State of Gujarat, 1998 (2) GLH 970 and by the Full Bench in this case of Majdoor Sabha Vs. State of Gujarat, 1998 (2)GLH 151 on which reliance is placed by the learned Counsel appearing as interveners will have no application. In all the three judgments referred to above, this Court was not directly concerned with the issue involved in the present case,namely whether the Labour Court is a "Court" within the meaning

of section 10 of the Contempt of Courts Act. Considering the provisions of Sections 77 and 78 of the Bombay Industrial Relations Act, 1946, the Apex Court in the case of State of Maharashtra Vs. Labour Laws Practitioners Association (supra), held that the Labour Court discharges judicial functions and the judges of the Labour Courts/ Industrial Tribunals belong to judicial service of the State and appointment of these judges is required to be made in consultation with the High Court as provided in Article 234 of the Constitution. The hierarchy contemplated in the case of labour court judges is the hierarchy of labour court judges and industrial tribunal judges with the industrial tribunal judges holding superior position of district judges. In view of this,a finding was recorded that the recruitment of Labour Court judges was required to be made in accordance with Article 234 of the Constitution. There cannot be any dispute with respect to the ratio laid down by the Apex Court in the said judgment. True, the Apex Court,in the said judgment, did consider its earlier judgment rendered in Bharat Bank's case (supra) and the judgment of Full Bench of this Court in the case of Mohammedbhikhan (supra) and reached the conclusion that the Labour Court is undoubtedly a "Court". However, the said question was decided for the purpose of deciding the question as to whether the presiding officer of such a Court can be said to hold the post in judicial service as contemplated in Article 234 of the Constitution. It appears to us that the question whether the Labour Court is a "Court" was decided for the purpose of deciding the question of recruitment of presiding officers. The Full Bench of this Court in the case of Gujarat Majdoorsabha Vs. State of Gujarat, after following the judgment of the Apex Court in the State of Maharashtra Vs. Labour Law Practitioners Association, has ruled that the person presiding over Industrial and Labour Court constitute a judicial service. In the said judgment also, the Full Bench of this Court was not concerned with the dispute involved in the present case. In view of the fact that the decision of the Apex Court in Alhar's case (supra) was not cited either before the Apex Court in State of Maharashtra Vs. Labour Law Practitioners Association (supra) or before the Full Bench of this Court which is directly on the point, it is binding to us. The present case is distinct from the case before the Apex Court as well as the case before the Full Bench. The Division Bench of this Court, in the case of Prantiya Kamdar Sena Vs. State of Gujarat, 1998(2) GLH 970 has held that the Labour Court judges form part of judicial service and, therefore, it is the constitutional duty on the part of the Governor to consult the High Court before such

appointment is made and, therefore, consultation for such appointment is a sine quo non. It was a case where the rules framed for appointment of judges of the Labour Court, for example, Labour Judges (Junior Division) Recruitment Rules 1982 and the recruitment rules for the post of Member, Industrial Court were never submitted to the High Court for its opinion for the reason that the judges of the Labour Court and the Members of the Industrial Court were not considered as part of the State Judicial Service. In the opinion of the Division Bench of this Court, no steps were taken to frame fresh recruitment rules in consultation with the Public Service Commission and the High Court, even after the decision of the Apex Court, in the case of State of Maharashtra Vs. Labour Law Practitioners Association. In the circumstances, the Division Bench was required to hold that the rules must be sent to the High Court for scrutiny at the stage they are proposed so as to enable the High Court to offer its advice. True, the Division Bench of this Court,in fact, considered the decision of the Apex Court in Alhar's case (supra). However, did not rely upon the ratio laid down on the ground that the Apex Court has not dealt with in detail and the question as to whether the Labour Courts would fall within the purview of "subordinate courts under the High Court" was not specifically decided. In any case, for deciding the question involved in the matter, the Division Bench, after placing reliance on the decision of the Apex Court in the case of State of Maharashtra Vs. Labour Law Practitioners Association, decided the same. As observed earlier, even if the Labour Court performing judicial functions and forming part of judicial service and the judges of the Labour Court, Industrial Tribunal belong to the judicial service of the State, will not make the Labour Court/ Tribunal as a "Court" so as to attract the provisions of section 10 of the Contempt of Courts Act. Merely because the High Court exercises powers under Articles 226 and 227 of the Constitution of India over the subordinate courts or tribunals and they are amenable to writ jurisdiction, will not make them "Courts" as contemplated by the Contempt of Courts Act. If that reason is accepted, all the forums constituted under the Central or Local Acts shall have to be declared as "Courts". They have wide powers which are out of the way from the ordinary law administered by Courts of law and they are not bound by ordinary law. They act on the principles of equity, justice and good conscience. Thus, their subjection to writ jurisdiction under Articles 226/227 of the Constitution of India is for a specific purpose and merely because they are amenable to writ jurisdiction, it would not make them "Courts" as

contemplated by the Contempt of Courts Act.

13. In view of the aforesaid discussion, we reach to the conclusion that the Labour Courts/ Industrial Tribunals are not "Courts" within the meaning of section 10 of the Contempt of Courts Act and, therefore, the proceedings initiated for the breach of order/ award passed by them under the provisions of Contempt of Courts Act are not maintainable.

14. Section 119-B of the Bombay Industrial Relations Act which authorises Labour Courts/ Industrial Courts to make a report to the High Court in case its contempt is committed by any person and the High Court, in turn, will deal with such contempt as if it were the contempt of itself by exercising powers and authority in accordance with the procedure and practice, in our opinion, will not make the Labour Court/ Industrial Tribunal, a "Court" constituted under the Bombay Industrial Relations Act. Merely because it is provided therein that the Labour Court or Industrial Court shall make a report about its contempt will not make them "Courts" in view of the reasonings and more particularly the reasonings that one need not go by nomenclature alone. We may simply refer without relying upon the decision of the Division Bench of this Court in the case of Ashoka Mills Vs. N.P.Modi, 1994(2) GLR 1072 wherein this Court has held that the Labour Court, while dealing with the matter under sections 78 and 79 of the Bombay Industrial Relations Act, is not a "Court" and, therefore, it has no jurisdiction to condone the delay by having recourse to section 5 of the Limitation Act.

15. With the aforesaid discussion, we answer question no.1 framed by us, namely whether the Labour Court is a "Court" within the meaning of Contempt of Courts Act, in the negative.

16. In view of this, the second question as to whether the contempt proceedings are maintainable when adequate remedy under section 33-C of the Industrial Disputes Act is available, has become redundant and academic. We may, however, like to decide the maintainability of the contempt proceedings when adequate remedy under section 33-C of the Industrial Disputes Act is available, assuming that another view is possible with respect to the views expressed by us on question no.1.

17. Section 29 of the Industrial Disputes Act provides for penalty for breach of settlement or award and provides that any person who commits a breach of any

term of any settlement or award, which is binding on him under the Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both [and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first] and the Court trying the offence,if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who,in its opinion, has been injured by such breach]. Thus, a specific provision is made in the Act to deal with any person who commits breach of any term of settlement or award which is binding on him under the Act. The Division Bench of this Court had an occasion to deal with the question whether section 29 of the Industrial Disputes Act is a bar to proceedings under section 22 of the Contempt of Courts Act.

In the case of S.G.Goswami Vs. Shaikh Abdulhakim Asmadmahamad, 1985(1) LLJ 281, the Division Bench held that :

" S.22 of the Contempt of Courts Act specifically states that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law relating to Contempt of Courts. Therefore, S. 22 of the Act is a clear reply to the contention that since S. 29 of the IndustrialDisputes Act is there to look after the breach of the award of Labour Court, Contempt of Courts Act should not be invoked against the respondent. "

On the facts of the case, the Court found the respondent guilty of contempt and was punished.This Court decided the said case on the basis that labour court is a court within the meaning of Contempt of Courts Act without deciding the said point.

In the case of Bipinchandra P.Singwala Vs. Navin Fluorine Industries and anr., 1981 GLR 1070, the Division Bench of this Court, after considering sections 33C and 33A(1) of the Industrial Disputes Act and section 3 of the Contempt of Courts Act, held that the power of the High Court under the Contempt of Courts Act does not depend on whether or not the petitioner can make an approach to the Labour Court or can file Civil Suit or apply for the execution of the award through the Collector by way of Recovery Application. In the opinion of the Division Bench, the Courts should avoid

multiplicity of proceedings and should see that justice is done to the parties and they are not obliged to incur avoidable expenditure. Relying on this decision, it was contended by the learned advocates who appeared as interveners that the remedy under section 33C under the Industrial Disputes Act is no remedy and even if the remedy is available under section 23 of the Industrial Disputes Act, the remedy under the Contempt of Courts Act does not depend upon the alternative remedy. Here also, this Court proceeded on the footing that Labour Court is a Court and decided the dispute on the question of remedy to execute award.

The Division Bench of this Court in the case of Vadodara Mazdoor Congress, Baroda Vs. IOC,1995(2)GLR 971 has laid down in no uncertain terms that when an award of the tribunal on a reference made under section 10 has been given, then the non compliance of the same would entitle the employee to apply under section 33C of the Industrial Disputes Act. For arriving at the said conclusion, the Division Bench placed reliance on the decision of the Apex Court in the case of East India Coal Co.Ltd. Vs. Kameshwar, 1968(1) LLJ 6. The Division Bench on the basis of the Supreme Court decision, laid down eight propositions on the question as to the scope of Section 33C(2) of the Industrial Disputes Act and held that section 33C was a provision in the nature of an executive provision and will apply to the cases where money was due to the workman under an award or settlement and that subsection (2) applied to both, nonmonetary as well as monetary benefits. The Division Bench in the said decision, clearly laid down that the proceedings for contempt should not be used with a view to merely see the execution of the award.

Again, the Division Bench of this Court in the case of P.R.Solanki Vs.Divisional Controller, GSRTC, 1996(2) GLR 267, after relying on the decision of Vadodara Mazdoor Congres(supra) held that there is an alternative remedy available to a workman to approach industrial forum under section 33C of the Industrial Disputes Act. It may be stated that the Division Bench also considered the earlier decision of the Division Bench of this Court in the case of Bipinchandra (supra). In P.R.Solanki's case, N.N.Mathur,J., while concurring with B.C.Patel,J. by a separate judgment, observed that:

> "In contempt proceedings, inquiry on various facts is required. During the inquiry, though summarily includes reply, rejoinder, sub-rejoinder, various affidavits production of various documents like audited accounts etc.,

> various applications are filed by the parties on which the Court is required to pass interim orders. Initially, a short notice is given under the hope that on returnable dates or one or two dates subsequent thereto,the respondents will comply with the award or the matter will be sorted out and the notice will be discharged. But inspite of all serious efforts, the experience shows that the matters are contested and even reply, rejoinder, compromise talks, its failure takes more than a year. In may cases, after 3 to 4 years, "Rule" is issued. Now, it has reached to a stage that inspite of the fact that two Hon'ble Judges constituting the Division Bench is assigned a regular roaster of contempt matters, even the contempt petitions filed in the year 1986 are still pending. The Court wonders how such a measure can be said to be effective to mitigate the hardships of a person in whose favours the award is passed.
>
> Thus, the vigilant and public spirited citizen are expected to invite the attention of the Government / Legislature, that while fixing the priorities to attain the need of fast changing society, with growing and competing interest, to deal with the subject to provide effective tooth under various enactments, more particularly, under the Industrial Disputes Act, 1947. (There are number of enactments, where remedy is provided without tooth making the remedy meaningless). It appears that some of the State Governments have made suitable Amendments to mitigate the hardship of the concerned people."

In view of the aforesaid judgments of this Court in the cases of Vadodara Mazdoor Congress and P.R.Solanki (supra),and the decision of Apex Court in East India Coal Co.Ltd., when it is laid down that in case of breach of order or award passed by the Labour Court, application to High Court under the Contempt of Courts Act cannot be entertained and the remedy under the Industrial Disputes Act should be availed of, we hardly see any ground for taking a different view in the matter. Suffice it to say that we are in total agreement with the views expressed in the aforesaid judgments.

18. In a recent decision in the case of R.N.Dey Vs. Bhagyabati Pramanik, (2000) 4 SCC 400, the Apex Court clearly laid down that weapon of contempt cannot be used for the purpose of executing a decree or implementing an

order for which law provides appropriate procedure. A decree holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the Court.

This judgment is a direct answer to the submissions advanced by learned advocates relying on the decision of the Division Bench of this Court in the case of Lopaben Vs. Hitendra R.Patel, 1999(2) GLR 1616 wherein it islaid down that merely because an order for payment of maintenance is executable as a decree, it does not mean that deliberate omission to pay maintenance would not amount to civil contempt.

19. With regard to the so-calleddifficulties pointed out by the learned advocates in getting appropriate reliefs from the Labour Court under section 33C of the Industrial Disputes Act, for the alleged difficulties in getting appropriate orders under section 33C of the Industrial Disputes Act, we cannot ignore the law laid down by this Court in the aforesaid judgments. Thus, we reject the second question by holding that contempt proceedings are not maintainable when adequate remedy under section 33C of the Industrial Disputes Act is available even if it is held that Labour Court/ Tribunal is a "Court" within the meaning of Contempt of Courts Act. In view of this, we reject this application with no order as to costs.

---

sonar/-